UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

ALEXANDER MURASHKO, derivatively on behalf of COMMVAULT SYSTEMS, INC.,	Civil Action No.
Plaintiff,	SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACHES OF FIDUCIARY DUTIES AND UNJUST ENRICHMENT
v.	
N. ROBERT HAMMER, ALAN G. BUNTE, BRIAN CAROLAN, FRANK J. FANZILLI, JR., ARMANDO GEDAY, KEITH B. GEESLIN, ROBERT F. KURIMSKY, LOUIS F. MICELI, GARY MERRILL, RONALD L. MIILLER, DANIEL J. PULVER, GARY B. SMITH, and DAVID F. WALKER,	**JURY TRIAL DEMANDED**
Defendants,	
and	
COMMVAULT SYSTEMS, INC.,	
Nominal Defendant.	

SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiff Alexander Murashko ("Plaintiff"), by and through his undersigned attorneys, hereby submits this Shareholder Derivative Complaint (the "Complaint") for the benefit of nominal defendant Commvault Systems, Inc. ("Commvault" or the "Company"), against certain current and former members of its Board of Directors (the "Board") and executive officers seeking to remedy defendants' breaches of fiduciary duties and unjust enrichment, from at least 2013 through the present (the "Relevant Period"). Plaintiff makes these allegations upon personal knowledge and the investigation of counsel, which included, among other things, review and

analysis of: a) public filings made by Commvault and other related parties and non-parties with the Securities and Exchange Commission ("SEC"); b) press releases and other publications disseminated by certain of the defendants and other related non-parties; c) news articles, shareholder communications, and postings on Commvault's website concerning the Company's public statements; d) publicly available filings in a related securities class action lawsuit, including the opinion denying a motion to dismiss, captioned *In re Commvault Systems, Inc. Securities Litigation*, 3:14-cv-05628 (PGS) (D.N.J.) (the "Securities Class Action"); and (e) other publicly available information concerning Commvault and the defendants. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

2. Plaintiff, on behalf of nominal defendant Commvault, contends that the Individual Defendants (defined herein) caused the Company to engage in an improper form of earnings management, delaying Commvault's recognition of software revenue in an effort to (i) hide the truth about the loss of its primary business partner, Dell, Inc. ("Dell"), which accounted for 20% of its revenues; and (ii) portray the Company as seeing legitimate, measured, and regular "growth." The individual defendants' misconduct caused the Company to violate Generally Accepted Accounting Principles ("GAAP"), has damaged the Company financially and reputationally, and, as alleged herein, was in breach of their fiduciary duties as none of their actions could have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

3. According to its public filings, Commvault is a leading provider of data and information management software applications and related services. As of March 31, 2016, Commvault licensed its data and information software to over 22,500 registered customers.

4. Commvault's software, sold under the "Simpana" brand name, consists of licensable modules that deliver backup and recovery, archive, replication, search and analytic capabilities across physical, virtual and cloud environments. Beginning in December 2003, the Company signed a critical partnership agreement with Dell, which in serving both as a reseller and original equipment manufacturing partner ("OEM"), agreed to sell Commvault's software to its own customers as a stand-alone product or as an integrated component of its own hardware.

5. The Commvault/Dell partnership continued to grow increasingly important to the Company after it went public in 2006. By 2007 and continuing through 2012, Dell accounted for approximately ***20% of Commvault's total revenue***, which itself ***quadrupled*** from $109,472,000 in 2007 to $406,639,000 by the start of the Relevant Period.

6. The Individual Defendants, seeing the impact Dell had on the Company, capitalized on this revenue growth story and assured investors and the market that annual revenue would undoubtedly continue to increase from approximately $500 million in fiscal year 2013 to $1 billion "over the next few years." Analysts responded favorably, but predicted that Commvault would have to grow by ***at least 20% year-over-year*** until fiscal 2017 to achieve such impressive growth projections. Importantly, at no point and despite having ample opportunities to do so, the Individual Defendants did not correct or contest this prediction.

7. Nor did the Individual Defendants ever acknowledge what they then-knew to be true: Commvault would not be able to meet 20% year-over-year software revenue growth targets

because Dell, starting in 2012, had begun acquiring certain of Commvault's competitors and, as a result, no longer compensated its employees for selling Commvault's products.

8. Rather than disclose the measurable impact this loss would have on the Company, the Individual Defendants reassured the investing public that Commvault had begun weening off of Dell, had planned to replace Dell in its entirety with other business partners, and that the loss of revenue from Dell had not and would not affect Commvault's achievement of its software revenue target numbers.

9. As discussed in greater detail below, the Individual Defendants—aware that Commvault's software revenue growth was slowing or likely to slow due to the loss of the Dell partnership, and as importantly, that the Company would be and was unable to replace Dell with adequate revenue-generating partners—opted not to adjust their forecasts and disclose the truth to investors, but instead decided to manipulate Commvault's financial results in violation of GAAP. Specifically, rather than recognizing millions of dollars in software revenue that Commvault had earned in prior year periods, the Individual Defendants caused Commvault at the end of fiscal year 2013, to increase—at a historic level—its deferred software revenue balance. The Company would report over $6 million is deferred funds – an amount ***nearly three times greater than any other deferred software revenue increase in the previous five fiscal years***.

10. During the Relevant Period, primarily in the second and third fiscal quarters of 2014, the Individual Defendants caused the Company to recognize a material portion of its artificially inflated deferred software revenue balance to create the illusion that Commvault was meeting its 20% year-over-year growth targets. In addition to violating GAAP, these accounting manipulations concealed from investors the software deficiency caused by the loss of the Dell partnership.

11. More specifically, in the second quarter of fiscal year 2014, the Individual Defendants caused the Company to recognize nearly $4.5 million in previously deferred software revenue and to falsely represent to the market that they had indeed achieved 20% year-over-year software revenue growth for that period. In reality, the Company would have missed analysts' projections for that quarter by at least $3 million had the Individual Defendants not manipulated the Company's reported results through the use of the software revenue deferral.

12. The third quarter of fiscal 2014 saw similar misconduct. Specifically, the Individual Defendants caused the Company to recognize another $4.1 million in previously deferred software revenue, leading the market to falsely believe that Commvault had achieved 20% year-over-year software revenue growth. In fact Commvault's quarterly growth less the $4.1 million would have been approximately 14%.

13. Remarkably, during the Relevant Period analysts questioned the impact of the loss of the Dell partnership and whether the Company's reported 20% year-over-year growth was due to the Individual Defendants' reporting deferred software revenue as opposed to actual software license growth. In response, the Individual Defendants emphatically stated, albeit knowing differently, that Commvault had replaced Dell with other business partners and that its achievement of 20% year-over-year growth targets was due to "***pure license revenue growth***," and not improper "smoothing" through the delayed recognition of deferred software revenue. For example, on Commvault's analyst conference call discussing its earnings for the second quarter of fiscal 2014, defendant N. Robert Hammer ("Hammer"), the Company's Chairman, President and Chief Executive Officer ("CEO"), stated that the Company had "***completely mitigated any Dell risk***" by replacing Dell with other strategic partners. In the third quarter of fiscal 2014, defendant Brian Carolan ("Carolan"), Commvault's Chief Financial Officer ("CFO") represented, "***[a]ny***

kind of falloff in Dell Revenue…will just be replaced through alternative distribution channels." Defendant Hammer then reiterated, "***We've moved those [Dell] accounts and that revenue to other distribution partners***." (Emphasis added).

14. Similarly, with respect to the impact of the Company's depletion of its deferred software revenue on growth, the Individual Defendants caused the Company to emphatically deny any connection between Commvault's recognition of millions of dollars in software revenue previously (and improperly) deferred and its ability to meet its 20% year-over-year growth targets. For example, in response to an analyst's question suggesting that such a connection existed, defendant Hammer immediately asserted, "***that is not true…the revenue was due to…pure license [software] revenue growth***." (Emphasis added). Then, he instructed the market not to "***get overly focused on deferred because you're going to get twisted up in your underwear***." (Emphasis added).

15. Given the importance of the Dell partnership, it is no surprise that the Individual Defendants were unable to sustain their fictitious 20% year-over-year growth story, particularly as the Company's deferred software revenue began to dry up. The ruse ended on April 25, 2014 when Commvault no longer had enough deferred software revenue for the Individual Defendants to recognize to fabricate 20% year-over-year software revenue growth, and was forced to disclose current period software revenue growth of a mere 10% year-over-year. This figure, substantially lower than what investors were led to believe, showed the market for the first time the overall breadth and negative impact the loss of the Dell relationship had on the Company. Immediately, investors responded. After learning that the Company's fiscal fourth quarter profit had declined 7.8% due to lackluster software revenue growth, Commvault's stock plummeted, falling from

$68.58 per share to $47.56 per share, representing a loss of over 30%. ***This wiped out nearly $1 billion of market value***.

16. Accordingly, as a result of the Individual Defendants' misconduct, as set forth herein, the Company has been damaged, giving rise to Plaintiff's reasonable suspicion that one or more Company fiduciaries breached their duties owed to the Company and/or engaged in other violations of law. It also has caused the Company to become the subject of the Securities Class Action.

17. On February 5, 2016, plaintiffs in the Securities Class Action filed a Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Securities Complaint"). On September 30, 2016, The Honorable Judge, Peter G. Sheridan ("Judge Sheridan"), denied in whole defendants' motion to dismiss (the "Securities Order").[1] In addition to finding that plaintiffs adequately alleged that defendants made false and misleading statements during the class period, and despite the heightened pleading standard pursuant to the Private Securities Litigation Reform Act ("PSLRA"), Judge Sheridan held that plaintiffs "adequately explained the requirements under GAAP and why "cookie jar" accounting is improper…identifie[d] CommVault's internal accounting methods…[and showed that] [b]y deferring recognition of the software revenue put into its "cookie jar" until the second and third quarters of fiscal 2014, and then falsely attributing its ability to meet software revenue targets to 'pure software license growth,' Defendants were able to create the illusion that CommVault was still a high growth Company, notwithstanding the loss of its partnerships with Dell." Securities Order at 14-15. "In sum," Judge Sheridan wrote, "the allegations regarding the loss of Dell,

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[1] The Securities Order is ECF Dkt. No. 89 of the Securities Action. Citations to the Securities Order shall appear in the following format: "Securities Order at __."

juxtaposed with Defendants' representations to the investing public that they had replaced Dell's business, are sufficient to make out a claim that Defendants made false or materially misleading statements." *Id.* at 15.

18. Commvault's Board currently consists of ten (10) directors, nine of whom cannot consider a demand to commence litigation against themselves on behalf of the Company without the requisite level of disinterestedness and independence. Accordingly, issuing a demand on the present Board to institute this action would be a futile, wasteful and useless act.

19. Thus, this shareholder derivative action should be allowed to proceed.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) in that Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds $75,000.00, exclusive of interests and costs.

21. This Court has personal jurisdiction over each of the Defendants because each is either a corporation conducting business and maintaining operations in this District, or is an individual who is either present in this District for jurisdictional purposes, or has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

22. Venue is proper in this district pursuant to 28 U.S.C.§ 1391 because a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in the wrongful acts detailed herein, occurred in this district. Moreover, one or more of the Defendants either reside in or maintains executive offices in this district, and Defendants have received substantial compensation in this district by engaging in numerous activities and conducting business here, which had an effect in this district.

PARTIES

23. Plaintiff is a current shareholder of Commvault and has continuously held Commvault common stock since May 2010. Plaintiff is a citizen of Russian Federation.

24. Nominal party Commvault is a Delaware corporation that maintains its principal executive offices at 1 Commvault Way, Tinton Falls, New Jersey 07724.

25. Defendant Hammer has served as the Company's Chairman, President and CEO since March 1998. During the Relevant Period, defendant Hammer reviewed, approved, and signed Commvault's filings with the SEC that contained false and misleading statements, as detailed herein. Defendant Hammer also participated in conference calls and industry conferences with securities analysts during which he made additional false and misleading statements imputable on the Company. Upon information and belief, defendant Hammer is a citizen of Florida.

26. Defendant Alan G. Bunte ("Bunte") has served as a director of the Company since January 2008, as Executive Vice President and Chief Operating Officer since October 2003, and as a senior vice president from December 1999 until October 2003. Upon information and belief, defendant Bunte is a citizen of New Jersey.

27. Defendant Carolan was promoted to CFO in October 2012 after serving as vice president, finance and chief accounting officer since July 2006. During the Relevant Period, defendant Carolan reviewed, approved, and signed Commvault's filings with the SEC that contained false and misleading statements, as detailed herein. Defendant Carolan also participated in conference calls and industry conferences with securities analysts during which he made additional false and misleading statements imputable on the Company. Upon information and belief, defendant Carolan is a citizen of New Jersey.

28. Defendant Ronald L. Miiller ("Miiller") has served as senior vice president of worldwide sales since April 2011. In that role, defendant Miiller was aware of, or recklessly disregarded, the negative impact the loss of the Dell partnership had on the Company's software revenue growth. Moreover, defendant Miiller had knowledge of when software revenue should have been recognized in accordance with GAAP and when it should have been accounted for as deferred software revenue. Upon information and belief, defendant Miiller is a citizen of Illinois.

29. Defendant Gary Merrill ("Merrill") was promoted to vice president, finance and chief accounting officer in October 2012, after serving Controller since September 2007. In that role, defendant Merrill was aware of, or recklessly disregarded, the negative impact the loss of the Dell partnership had on the Company's software revenue growth. Moreover, defendant Merrill had knowledge of when software revenue should have been recognized in accordance with GAAP and when it should have been accounted for as deferred software revenue. Upon information and belief, defendant Merrill is a citizen of New Jersey.

30. Defendant Frank J. Fanzilli, Jr. ("Fanzilli") has served as a director of the Company since July 2002. Upon information and belief, defendant Fanzilli is a citizen of Connecticut.

31. Defendant Armando Geday ("Geday") has served as a director of the Company since July 2000. Upon information and belief, defendant Geday is a citizen of New York.

32. Defendant Keith B. Geeslin ("Geeslin") has served as a director of the Company since May 1996. Upon information and belief, defendant Geeslin is a citizen of California.

33. Defendant Robert F. Kurimsky ("Kurimsky") has served as a director of the Company since February 2001. During the Relevant Period, defendant Kurimsky served as a member of the Board's Audit Committee, which was responsible for, among other things, monitoring the integrity of the financial statements of the Company and the effectiveness of the

Company's internal controls over financial reporting. Upon information and belief, defendant Kurimsky is a citizen of Connecticut.

34. Defendant Daniel J. Pulver ("Pulver") has served as a director of the Company since October 1999. During the Relevant Period, defendant Pulver served as a member of the Board's Audit Committee, which was responsible for, among other things, monitoring the integrity of the financial statements of the Company and the effectiveness of the Company's internal controls over financial reporting. Upon information and belief, defendant Pulver is a citizen of New Jersey.

35. Defendant Gary B. Smith ("Smith") has served as a director of the Company since May 2004. Upon information and belief, defendant Smith is a citizen of Maryland.

36. Defendant David F. Walker ("Walker") has served as a director of the Company since February 2006. Defendant Walker is Chairperson of the Board's Audit Committee, which was responsible for, among other things, monitoring the integrity of the financial statements of the Company and the effectiveness of the Company's internal controls over financial reporting. Upon information and belief, defendant Walker is a citizen of Florida.

37. Collectively, defendants Hammer, Bunte, Carolan, Fanzilli, Geday, Geeslin, Kurimsky, Miiller, Merrill, Pulver, Smith and Walker are referred to herein as the "Individual Defendants."

38. Collectively, defendants Hammer, Bunte, Carolan, Miiller and Merrill are referred to herein as the "Officer Defendants."

39. Collectively, defendants Hammer, Bunte, Fanzilli, Geday, Geeslin, Kurimsky, Pulver, Smith and Walker are referred to herein as the "Director Defendants."

40. Collectively, Defendants Kurimsky, Pulver and Walker are referred to herein as the "Audit Committee Defendants."

41. Non-defendant Joseph F. Eazor ("Eazor") has served as a director of the Company since October 2015.

THE INDIVIDUAL DEFENDANTS' DUTIES

42. By reason of their positions as officers, directors, and/or fiduciaries of Commvault, and because of their ability to control the business and corporate affairs of Commvault, the Individual Defendants owed Commvault and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Commvault in a fair, just, honest, and equitable manner.

43. Further, the Individual Defendants were and are required to act in furtherance of the best interests of Commvault and its shareholders so as to benefit all shareholders equally, and not in furtherance of their personal interest and benefit. Each director and officer of the Company owes to Commvault and its shareholders the fiduciary duty to exercise good faith and due diligence in the administration of the affairs of the Company, and in the use and preservation of its property and assets, as well as the highest obligation of fair dealing.

44. Because of their positions of control and authority as directors and/or officers of Commvault, having knowledge of material non-public information regarding the Company, the Individual Defendants were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. To discharge their duties, the officers and directors of Commvault were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties the officers and directors of Commvault were required to, among other things:

a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner, and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the investing public;

c. Properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's financial results; and

d. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

45. Pursuant to the Audit Committee's Charter, all members of the Audit Committee were and are responsible for, among other things, monitoring: (1) the integrity of the financial statements of the Company, (2) the effectiveness of the Company's internal controls over financial reporting, (3) the independent public accountant's qualifications and independence, (4) the Company's compliance with legal and regulatory requirements and (5) the performance of the Company's internal audit function and independent auditor. Moreover, the Audit Committee "review[s] and approve[s] the report required by the rules of the Securities and Exchange Commission (the "SEC") to be included in the Company's annual meeting proxy statement."

46. Despite deflecting responsibility to "management, the internal auditor [defined therein], and the independent auditor" for determining that "the Company's financial statements and disclosure are complete and accurate and are in accordance with generally accepted accounting principles and applicable laws," the members of the Audit Committee were responsible for:

- Recommend[ing] to the Board whether the annual audited financial statements should be included in the annual report on Form 10-K for filing with the SEC;

- Review[ing] and discuss[ing] the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations," before the filing of the Company's Form 10-K and Form 10-Q; and

- Discuss[ing] generally with management earnings press releases (paying particular attention to any use of pro forma information or non-GAAP financial measures), as well as financial information and earnings guidance (generally or on a case-by-case basis) provided to analysts and rating agencies.

47. Additionally, Commvault requires "employees, directors, vendors and other third parties working on behalf of the Company to uphold the highest standards of professional and ethical behavior, including compliance with all applicable laws and regulations, in all business-related transactions, activities and interactions." As such, the Company has adopted a Code of Business Ethics and Conduct (the "Ethics Code"), which expressly requires that:

> **Accurate Financial Reporting and Record Keeping**
>
> …financial, accounting, and other records must accurately and fairly reflect our transactions in accordance with accepted accounting practices and procedures. We maintain systems of controls and procedures designed to assure the completeness and accuracy of financial and other records. We expect you to adhere to these procedures. We will not tolerate false or artificial entries in the Company's books and records or arrangements that may result in such entries. No payment should be made with the understanding that it will be used for any purpose other than disclosed by the supporting documentation and recorded on the Company's books.
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> **Public Communications**
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> ***It is important that all of our external communications—to investors, customers, business partners, government bodies and the public—are fair and accurate***. To help assure that, all public communications must be coordinated with the Investor Relations team or the Public Relations team. We may institute additional policies regarding public disclosures to address specific regulations or requirements.

(Emphasis added).

SUBSTANTIVE ALLEGATIONS

A. About Commvault And Its Reporting of Software Revenues

48. Incorporated in 1996, Commvault has since developed, marketed and sold data and information management software applications under the "Simpana" brand, providing large global enterprises, small and medium sized businesses and government agencies a full complement of data and information management solutions, including backup and recovery, archive, replication, eDiscovery, and virtual and cloud environments.

49. Approximately half of the Company's annual revenue is derived from licensing its software applications to end-users both directly, through an in-house sales force, and indirectly, through a global network of reseller partners and OEMs. As described herein, among Commvault's most heavily relied on strategic business partners during the Relevant Period was Dell, ***whose sales efforts accounted for approximately 20%*** of Commvault's yearly revenues.

50. Like other software companies, Commvault was and is required to recognize software revenue pursuant to GAAP, among other relevant accounting provisions and guidance. Critically, Commvault is required to match revenues and expenses to both each other and the periods to which they relate. (*i.e.*, the "accrual" method of accounting). Specifically, according to FASB's Accounting Standards Codification ("ASC") Topic 605, considered the "single source of authoritative nongovernmental U.S. generally accepted accounting principles," Commvault is required to recognize revenue, including revenue generated from the sale or licensing of software, when: (i) the revenue is realized or realizable, and (ii) the revenue is earned. Revenue is realized when "products (goods or services), merchandise, or other assets are exchanged for cash or claims to cash," revenue is realizable when "related assets received or held are readily convertible to known amounts of cash or claims to cash," and revenue is earned when "the entity has substantially

accomplished what it must do to be entitled to the benefits represented by revenues." *See* ASC 605-10-25-1.

51. ASC Topic 985 further provides guidance on when software companies are to recognize software revenue, stating in relevant part:

> If the arrangement does not require significant production, modification, or customization of software, revenue shall be recognized when all of the following criteria are met: (a) persuasive evidence of an arrangement exists; (b) delivery has occurred; (c) the vendor's fee is fixed or determinable; and (d) collectability is probable.

52. When one or more of the above criteria are not met, a company is required to defer revenue recognition until the accounting period during which each element is met. It is, therefore, not uncharacteristic for a software company like Commvault to maintain a sizable amount of deferred revenue on its balance sheet. Notably, before the start of the Relevant Period, Commvault's reported deferred software revenue liability fluctuated from about $722,000 to $3.1 million for the periods between 2011 and the third quarter of 2013.

53. The Company's own public filings also described the circumstance under which revenue would be deferred:

> Deferred revenues represent amounts collected from, or invoiced to, customers in excess of revenues recognized. This results primarily from the billing of annual customer support agreements, as well as billings for other professional services fees that have not yet been performed by the Company and billings for license fees that are deferred due to one of the recognition criteria not being met. The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of software revenue. The Company expenses internal direct and incremental costs related to contract acquisition and origination as incurred.

54. By the end of fiscal year 2013, however, the Individual Defendants—rather than comply with GAAP and continue to recognize software revenue on particular licensing transactions in the proper quarter—ignored their responsibilities, turned a blind eye to their own

deferred software revenue recognition guidelines, and caused the Company's deferred software revenue line item on Commvault's balance sheet to swell from $3.1 million to $9.2 million.

55. Unbeknownst by the market at the time, yet now clear, was the Individual Defendants' motivation behind this decision: namely, to cover up the fact that, with the loss of the Dell partnership, Commvault would not be able to generate enough software revenue through the sale of licenses to meet its revenue growth targets. Instead, with an inflated deferred software revenue pot from which the Individual Defendants could withdraw from, and a commitment to conceal the truth about the Company's lackluster sales performance, the market was cajoled into thinking that the Company was thriving, executing and meeting its quarterly and year-over-year financial goals.

B. Reporting "Record Revenues" the Individual Defendants Cause the Company to Issue False and Misleading Statements About Its Ability to Maintain High Software Revenue Growth Without Dell

56. From its IPO until the beginning of the Relevant Period, the Individual Defendants caused the Company to credit its partnership with Dell as the source of a material percentage of its total revenue. With Dell selling, marketing, and supporting Commvault's software applications or incorporating Commvault's software applications into its own hardware or systems, which they then sold, Defendant Hammer, in the Company's May 8, 2012 earnings conference call for the fourth quarter of fiscal 2012, emphasized the "significant opportunities" existing for "collaborative solutions in the enterprise segment of the market [i.e., transactions over $100,000] for both current and future Commvault technologies." He stressed, "***[t]he bottom line is we expect continued strong results from this partnership in FY'13 and beyond.***"

57. The table below illustrates just how critical the Dell partnership was to Commvault, showing the percentage of revenue attributed to the Dell Partnership for each reporting year from 2007 through 2013:

Fiscal Year	Percentage of Revenue Attributed to Dell Partnership
2007	19%
2008	24%
2009	23%
2010	24%
2011	23%
2012	22%
2013	20%

58. The Individual Defendants further played up the Dell partnership, even if not referencing it explicitly, by causing the Company to tell investors to anticipate total annual revenue to increase from about $500 million in fiscal 2013 to over $1 billion "over the next few years." Analysts were quick to determine that the Company's revenue would have to grow ***at least 20% year-over-year*** to reach $1 billion by fiscal 2017.

59. By the middle of 2013, however, the nature of the Dell partnership changed. Dell began acquiring its own software products that were similar to Commvault's software and then started competing with the Company in the small and medium business market. Defendant Hammer acknowledged on the Company's July 31, 2012 earnings conference call for the first quarter of fiscal 2013, how "Dell…will very aggressively market their newly acquired products and there will be some overlap [with Commvault's products.]" As a result, the Individual Defendants caused the Company to begin to move Commvault's small and medium business segment transactions away from Dell. They also began searching for alternative strategic business partners that were capable of selling Commvault's software to this discrete market.

60. By the start of the Relevant Period, however, and despite the drastic change in its relationship with Dell, Commvault, crediting Dell, reported "record revenues," including 23% year-over-year growth in software revenues in the fourth quarter of fiscal 2013, and 25% software growth for the full fiscal year. Specifically, Commvault's May 7, 2013 Form 8-K filed with the SEC attributed this software revenue growth to "another quarter of record enterprise software deals (transactions greater than $100,000)." Then, during its analyst conference call held on the same day, the Individual Defendants continued to credit "sales through our Dell relationships [which] accounted for approximately 19% of total revenue for the quarter. Total quarterly revenues grew 8% sequentially, and were flat year-over-year."

61. Nevertheless, Defendant Carolan, represented during the May 7, 2013 analyst call that the Company had been successful in transitioning its small and medium business away from Dell, stating in relevant part, "***we have successfully shifted most of our SMB [small and medium business] business to non-Dell distribution partners***." Later on the same call, Defendant Hammer similarly confirmed, "***we shifted all…of our SMB business from Dell to other channels.***"

62. This prompted questions from analysts about the Company's ability to maintain software revenue growth without Dell. In response, the Individual Defendants assured the market that the transition away from Dell would not adversely affect Commvault's growth. For instance, in response to a question concerning the impact on Commvault following the move away from Dell, given the historically consistent and highly touted revenues attributed by the Company to Dell, Defendant Hammer explained, "we do not operate on hope. We operate on plans that we can execute…[W]e're taking ***very clear, direct action***, over time, to move more of our enterprise revenue that's currently at Dell, into other distribution partners…."

63. Analysts, having absorbed the Individual Defendants' statements, responded favorably to this news:

- Lake Street Capital Markets stated in a reported entitled "Raising Target to $90. Q4 Shows Growth Story Intact. Outperforming In a Challenging Environment" that, "Dell (19% of Q4 revenue) has made clear it prefers to market is branded product to SMB [small and medium business] partners. ***CommVault saw the move coming a year ago and feels it has sufficiently developed alternative channels so that a downward percent-of-revenue trend at Dell will not upset the CommVault growth story.***"

- Piper Jaffray stated in an analyst report entitled, "Solid Q4 Results; Simpana 10 Just Getting Started; OW, $86 PT," that it, "looking forward, [] expect[s] that any potential fallout from CommVault's relationship with Dell, which accounted for 19% of FQ4 (Mar) revenue, can be addressed through increased business with Arrow [another distribution partner]."

64. Like the Company's previous earnings call (on May 7, 2013), Commvault's July 30, 2013 earnings call for the first quarter of fiscal 2014 (ended June 30, 2013) included representations from the Individual Defendants that touted the Company's continued reliance on Dell. This time, however, the Individual Defendants also assured listeners that the Company would continue to achieve double-digit growth despite shifting away from Dell. Specifically, Defendant Carolan reported that the Company continued to rely upon Dell for 20% of its total revenue, stating, "Sales through our Dell relationship accounted for approximately 20% of total revenues for the quarter," but then, all but promised, "***we remain confident in our ability to continue to achieve solid double-digit revenue growth during FY 2014 despite the continued shift away from Dell distribution.***"

65. Similar statements were communicated during the Company's October 29, 2013 earnings call for the second quarter of fiscal 2014. Again, Defendant Carolan reported that, "sales through our Dell relationship accounted for approximately 19% of total revenues for the quarter." Defendant Hammer then represented that the Company mitigated all Dell risk, having replaced

Dell with other distribution partners including Hitachi Data Systems ("Hitachi") and NetApp. Specifically, Defendant Hammer affirmatively stated:

> Hitachi, in the field, we have got, I would say globally, extremely good traction on very high growth. Obviously, we have done really well in the US with Arrow and the whole distribution network, the resale network underneath them, particularly on some of the higher velocity initiatives in the Dell replacement with partners like CDW. ***We had to completely mitigate [sic] any Dell risk.*** With those kinds of initiatives, you will see it in our numbers going forward where Dell is going to go down. ***Our growth will continue to be – likely continue to be really solid***….

66. Two days later, the Individual Defendants caused the Company to file with the SEC on Form 10-Q the Company's financial results for the period ended September 30, 2013. Once again, the value of the Dell partnership was on full display, "Sales through the Company's reseller and original equipment manufacturer agreements with Dell Inc. (Dell) totaled 20% and 21% of total revenues for the six months ended September 30, 2013 and 2012, respectively." Nonetheless, the Individual Defendants caused the Company to announce that Commvault terminated its OEM agreement with Dell effective December 16, 2013, but that its reseller agreement with Dell remained in place.

67. Following this announcement, Commvault received a "comment letter" from the SEC, which expressed the commission's concern over the impact on Commvault's financial results of the terminated OEM agreement. The SEC asked, in relevant part:

> Please tell us the percentage of revenue generated from each of these agreements [the reseller agreement and the OEM agreement] with Dell for the six months ended September 30, 2013 and the twelve months ended March 31, 2013. Also, tell us what consideration was given to including such information in future filings in order to provide investors with a better sense as to the impact of the terminated agreement on your results of operations in the future.

68. By letter dated January 14, 2014, Defendant Carolan provided the SEC with the requested percentages, and stated, *inter alia*: "we believe that the impact of the terminated OEM

agreement ***is not material to our business or results of operations*** and that ***our prior disclosures are adequate to allow investors to understand the potential impact to our results***."

69. The market learned about the Company's inability to replace Dell's OEM partnership agreement with that of other business partners, after, on January 29, 2014, Defendant Hammer disclosed that revenue, for the first time, generated from the Company's Dell partnerships had significantly declined. "Sales through our Dell relationships accounted for approximately 11% of our total revenues for the quarter. ***Total quarterly Dell revenues were down 28% year-over-year and 38% sequentially.***" (Emphasis added). In combination with the substantial decline in Dell revenue, the Individual Defendants caused the Company ***to recognize $4.1 million in previously deferred software revenue*** for the quarter, as detailed further below. Of note, had the Company not recognized this deferred software revenue, the Company's quarterly growth would have been ***a mere 14%.***

70. This news demonstrated that the Company was not capable of replacing the software revenue generated by the Dell partnership through other strategic business partners. It further showed that the Company was not going to, because it could not, meet the 20% year-over-year software revenue growth target that analysts expected and which the Company did not deny.

71. The market reacted swiftly and negatively. Commvault's stock dropped markedly, from a closing price of $76.10 per share on January 28, 2014 to a closing price of $69.44 on January 29, 2014.

72. Rather than admit the truth, the Individual Defendants continued to assure investors and analysts that Dell revenue had been and would be replaced by others. For example, on the Company's January 24, 2014 earnings call, in response to an analyst question asking about the impact of the "sharp falloff in the Dell relationship," Defendant Carolan pledged, "***Any kind of***

falloff in Dell revenue…will just be replaced through alternative distribution channels."

Defendant Hammer added:

> We started – as we extracted from Dell we did two things. ***We successfully – everybody thought we couldn't, in a few quarters, navigate our way out of Dell; for all practical purposes, we're out. We've moved those accounts and that revenue to other distribution partners***. Secondly, we started to build our own, I'll call it, mid-market capability and started to roll out products in to that mid-market.

(Emphasis added).

73. Analysts wondered how the Company could see the same revenue growth numbers without Dell. During a Piper Jaffray Technology, Media and Telecommunications Conference on March 11, 2014, for example, the Company was asked:

> Maybe if we just turn toward your end markets now, last quarter your OEM agreement with Dell terminated in the December Quarter of 2013. ***It's pretty unique, in my opinion, for a company to basically take a 25% contributor to total revenue and then completely vacate that channel and then not miss a beat in terms of revenue growth.*** And so I guess, can you give us any color in terms of what have you been doing there to move away from Dell?

In response, Defendant Hammer explained:

> So we clearly did – so we don't have to go through all the background as to why. But we – you know, I think we said earlier that we control a lot of those accounts. ***And what we did is we moved those accounts to other resellers, in a very detailed, programmatic way…***
>
> And it was done as a major project, very detailed, very structured. It took a lot of energy and effort, ***but its done.*** …
>
> When we did that, ***we also moved revenue to the high velocity midmarket with partners like [TBW] [sic, CDW] and bundled products specifically to the midmarket. We did that, and at the same time we're moving our enterprise guys to the high end enterprise….***

C. After Improperly Deferring Revenue Recognition to Conceal the Revenue Losses Associated with Dell, the Individual Defendants Caused the Company to Falsely and Misleadingly Deny That Deferred Software Revenue Contributed to Commvault's Year-Over-Year Growth

74. To support the myth that the Company was capable of maintaining its high software revenue growth despite the loss of Dell as a strategic partner, the Individual Defendants undertook a concerted effort to make the Company's financials convey the same story. Rather than acknowledge that the Company was not capable of replacing the lost revenue associated with the Dell partnership, aware that analysts predicted that Commvault needed to achieve 20% year-over-year growth each quarter to meet its growth targets, the Individual Defendants chose to improperly defer the recognition of software revenue—in violation of GAAP as well as its own standards—so that they could then recognize it in future lackluster quarters.

75. On May 7, 2013—the same day that the Individual Defendants assured analysts on the Company's earnings call that Commvault had "***shifted all…of our SMB business from Dell to other channels***"—the Individual Defendants caused the Company to announce its fourth quarter and fiscal 2013 financial results in a Form 8-K filed with the SEC. Therein, it was announced that the Company had achieved fourth-quarter software revenue of $72.1 million, which substantially exceeded analysts' expectations of $66 million to $71 million, and reflected 23% year-over-year software revenue growth. It was also reported that the Company had deferred over $6 million in software revenue that quarter. Tellingly, the Individual Defendants provided no explanation as to the nature of the software sales from which this revenue arose. As a result, the Company's deferred software revenues ballooned to a post-IPO high of ***$9.2 million***. (The Company did not recognize any of the $3.1 million of deferred software revenue it previously recorded on its balance sheet as of the end of the third quarter of fiscal 2013).

76. On October 29, 2013, the Individual Defendants caused the Company to issue a press release announcing its financial results for the second fiscal quarter for the period ended September 30, 2013. In the press release, which was also filed with the SEC on Form 8-K, it was reported that Commvault's quarterly year-over-year software revenue grew 20%. It was also reported that the Company recognized $4.5 million of the approximately $9.2 million of deferred software revenue. Notably, had the Company not recognized $4.5 million, Commvault's quarterly year-over-year growth would have only been 12%, Commvault would not have achieved the critical 20% year-over-year software revenue growth rate, and Commvault would have missed its revenue estimates and analysts' expectations for the quarter.

77. During the Company's October 29, 2013 earnings conference call for the second quarter of 2014, analysts specifically questioned whether the Company's recognition of previously deferred software licensing revenue indicated that software revenue growth was slowing. An analyst for Raymond James & Associates, for example, asked Defendant Carolan:

> On the deferred, it sounds like it is pretty lumpy and obviously had the fall off this quarter in the license fees. But as we calculated billings or bookings, they were below the rate of revenue growth this time. Typically they have been about the same. So, given the lumpiness, does that make sense Brian [Carolan], to think that rate starts to head back up towards your revenue growth rate?

In response, Defendant Carolan dismissed the analyst's concerns, stating, "***I wouldn't read into the quarterly swings***...."

78. On the same call, an analyst from Lazard Capital Markets, similarly asked, "how meaningful is [the deferred revenue number] as a metric?" In response, Defendant Carolan stated, "Software will fluctuate from quarter to quarter depending on the timing of recognition and very large perpetual deals." He then emphasized that software aside, "the totality of deferred revenue was up 24% year-over-year, which is ***fairly strong growth***..." Defendant Hammer added, "***The***

combination of visibility and funnel has also improved on a relative basis. So the way I would read into that is, our business momentum has clearly increased… " (Emphasis added).

79. These assurances caused analysts to respond favorably:

- Lake Street Capital stated in a report entitled, "Lumpy Billings Offer Good Entry Point. Reiterate BUY, $93 Target," that although, "it makes sense for growth investors to pay attention to [deferred revenue]," they were comfortable with Commvault's anticipated growth based on Defendant Hammer's representations that the combination of visibility and funnel, "ma[d]e [the Company] comfortable."

- Piper Jaffray in its analysis entitled, "Solid FQ2 (Sep) Results; Visibility and Deal Pipeline Improving. OW, $96 PT," stated, "Excluding the deferred component, software revenue increased 10.1%, which is a deceleration from the prior quarter. However, management noted that this was entirely due to the timing of the recognition of deals in the quarter and this growth should bounce back in FQ3 (Dec). ***Moreover, deferred revenue does not equal visibility and we would remind investors that management specifically stated that visibility is improving, with FQ3 off to a good start.***"

(Emphasis added).

80. The Individual Defendants' ruse continued. On January 29, 2014, the Individual Defendants caused the Company to announce in a press release and a Current Report filed on Form 8-K with the SEC, Commvault's financial results for the third fiscal quarter ended December 31, 2013. By this quarter, total revenues from Commvault's Dell partnership were down 28% year-over-year and 38% sequentially, yet it was reported that Commvault again achieved quarterly year-over-year software revenue growth of 20%.

81. As was previously the case, the Company's financial results supported the Individual Defendants' misleading growth story because they were buoyed by a significant portion of deferred software licensing revenue, which the Individual Defendants caused the Company to report during what otherwise would have been another disappointing revenue growth quarter. Indeed, the January 29, 2014 8-K announced that the Company recognized approximately $4.1

million in previously deferred revenue from software licensing. This left Commvault with a mere $600,000 in its deferred software licensing revenue liability account. Critically, but for the recognition of $4.1 million in previously deferred software revenue, Commvault would have again missed its 20% year-over-year target; this quarter only generating about 14% revenue growth.

82. On this news, perhaps because the market learned from the Individual Defendants that Dell revenue had significantly decreased ***for the first time***, Commvault's stock fell from $76.10 per share to $69.44, or nearly 9%.

83. Quickly, though, the Individual Defendants sought to and did lessen the reaction from the market by insisting, yet again, that Commvault's shrinking deferred software revenue licenses were not an indicator of the Company's growth trajectory. During the Company's January 29, 2014 earnings call for the third quarter of fiscal 2014, for example, in response to a question from BMO Capital Markets asking Defendant Carolan to "go through the deferred revenue and talk about the break out between maintenance and product and if there were any changes in the product deferred, any meaningful movement there and then just what the maintenance deferred were," Defendant Carolan assured that a shrinking deferred software revenue balance was not indicative of decelerating software revenue growth, stating in relevant part, "That [deferred revenue] will fluctuate a bit quarter to quarter, but we feel that ***it's not a good indicator of our licensed revenue growth***, which was up 20% year-over-year..."

84. An analyst from William Blair & Company was more direct, suggesting a link existed between the Company's recognition of deferred software revenues and its software revenue growth. Speaking directly to Defendant Hammer, the analysts recognized that he and the Company, "…had a couple of quarters now where you've been able to take some things off the balance sheet, which has allowed you to grow very nicely." In response, Defendant Hammer

represented in no uncertain terms that no connection exists between the Company's recognition of deferred revenue and its software revenue growth, stating:

> ***That is not true***. Let's be really clear. ***In Q3, that revenue did not come off the balance sheet. The revenue was due to, on software revenue, was due to pure license revenue growth.*** That is the misconception out there. Total revenue, yes, it impacts total revenue, but ***it does not impact or did not impact in Q3, our software revenue significantly***.
>
> I'll let Brian [Carolan] take this from here, but to be really clear, we had extremely strong license revenue growth based on million dollar deals. They were at a record and it drove our results. That's what you've got to focus on. ***You guys are all twisted on up on deferred, but I think you're just overstating the impact of deferred to what's driving the growth of this Company.***

(Emphasis added).

85. Defendant Hammer further assured investors that the Company's "visibility" and "funnels" remained strong, suggesting, in fact, that investors should focus on Commvault's strong visibility and funnels, and not on its diminished deferred software revenue, as a measure of software licensing revenue growth. He credited, "higher visibility" and "higher funnel" going into the fourth quarter of fiscal 2014, as reasons why "***impact to our software revenue growth from deferred is small and getting smaller***."

86. In response to another analyst question confirming that deferred revenue had in fact decreased by $4.1 million, Defendant Hammer urged analysts and investors not to focus on deferred software revenue as a measure of software revenue growth:

> Let me clarify something. That is correct. It's where the math is, but when I say visibility is up, you don't see it, but I'm telling you, ***on our license revenue and growth, when you take all of that into consideration, is strong***. We've just got to keep it that way. ***Don't get overly focused on deferred because you're going to get twisted up in your underwear.***

(Emphasis added).

87. Defendant Hammer further represented in response to the same analyst that the Individual Defendants followed accounting rules and guidance concerning the timing of revenue recognition, stating, "we're very strict in how we – and as soon as it is revenue, it become revenue. ***We have a very rigorous consistent revenue recognition checklist here.***" (Emphasis added). Defendant Hammer, similarly, represented that the Company "***continued to meet our stated objectives in transiting away from Dell to other distribution partners.***" (Emphasis added).

88. The impact of the loss of revenue from Dell on Commvault's deferred revenue balance was also questioned during the earnings call. For example, an analyst from Stifel Nicolaus asked:

> As a follow-up to the deferred revenue discussion, I know that you had mentioned, obviously, a sharp falloff in the Dell relationship and you also alluded to that majority being driven by the maintenance stream of that relationship. Has that or should we expect that to continue or will that weigh on the deferred revenue balance as we go forward? Or rather, are you able to replenish the maintenance stream into that deferred revenue line?

Defendant Carolan reiterated, "***No, it won't have an impact. Any kind of falloff in Dell revenue…will just be replaced through alternative distribution channels.***"

89. Analysts absorbed the Individual Defendants' assurances about Commvault's shrinking deferred software revenue and its non-impact on software revenue growth:

- William Blair in its report entitled, "Deferred Revenue Fears Overblown, on Our View; Maintain Confidence in Software Revenue Growth and Outperformance," acknowledged "investor fears about software revenue deceleration," and the impact of deferred software revenue recognition on the Company's quarterly revenue and earnings, noting that an "additional $4.1 million decline in deferred license revenue in the third quarter" boosted "the software revenue line again." It, however, deferred changing its position because of the Company's depletion of its deferred software licensing revenue making, "the March-quarter software revenue [] a tell-tale metric to either dispel or validate fears of deceleration."

- Jeffries, in an analyst's report entitled, "Moving, But a Few Hidden Parts to F3Q," observed the impact of deferred software revenue on the Company's growth and noted, "a drawdown in deferred software muted overall growth … Management downplayed the relevancy of deferred license due to timing and total deal activity but the $9mn YTD drawdown, increase in linearity, and go-to-market changes heighten the execution concerns."

- JMP Securities issued a report entitled, "Earnings Beat, but Misses Deferred Revenue and Dell Contribution Down 28%," illustrating how "in 3Q revenue from Dell decreased drastically and was down 27% YOY (and down 38% sequentially)," suggesting that "this drastic reduction has spooked investors…"

90. Indeed, investors and analysts reacted, but not as expected by JMP Securities, rather they generally took comfort in the Individual Defendants' reassurances:

- William Blair reiterated it "outperform" rating on January 29, 2014, stating "we continue to believe that CommVault's guidance generally leaves ample room for upside given the company's momentum and history of outperformance." Moreover, that deferred revenue "***is not deemed to be a good indicator of license revenue growth by management***," since it will "fluctuate from quarter-to-quarter."

- Macquarie (USA) Equities Research concluded in its report entitled, "Giving the Benefit of the Doubt, that without the Company's $4.1 million in deferred revenue, "software revenue growth would have been a more pedestrian 14% y/y instead of the reported 20.2% y/y" and "Dell's contribution to CVLT's revenue declined to 11% from 20% in the prior six months." Nonetheless, Macquarie stated, "we are encouraged by management's commentary around improving visibility...[and] ***we are inclined to believe that CVLT can revive its growth momentum in 4Q FY14***."

91. Over the course of the next five weeks, Defendant Hammer would sell his personal Commvault stock while in possession of material nonpublic information. On February 14, 2014, Defendant Hammer sold 44,630 CommVault shares for proceeds of over $3 million. Four days later, on February 18, 2014, Defendant Hammer sold another 68,851 shares for proceeds of nearly $5 million. Then, on March 5, 2014, Defendant Hammer sold another 148,339 shares for over $10 million.

D. The Truth Emerged Once Commvault's Deferred Revenue Dried Up And the Individual Defendants Determined They Could No Longer Recognize Previous Software Sales to Artificially Reach the 20% YOY Target

92. Contrary to their adamant, albeit false and misleading, assurances that deferred software revenue was a meaningless indicator of growth, without the recognition of deferred software licensing revenue—which was so heavily relied on for at least the prior two reporting periods—the Individual Defendants could no longer conceal the fact that Commvault was seeing and had seen growth deceleration due to the loss of the Dell partnership.

93. On April 25, 2014, the Individual Defendants caused the Company to announce that its fiscal fourth quarter profit had declined 7.8% compared with the same period of the prior year due to significant deceleration in growth. More specifically, the Individual Defendants caused Commvault to concede that, "software revenue in the fourth quarter of fiscal 2014 was $79.0 million, an increase of 10% year-over-year and flat sequentially," which revealed that software revenue growth missed analysts and investor expectations by a whopping 10%.

94. On the Company's earnings conference call, held the same day, Defendant Hammer confirmed that "lower than forecast results in the Americas…negatively impacted our license revenue growth for the quarter." He further confirmed that, contrary to the Individual Defendants' prior representations that the move away from Dell would not affect Commvault's software revenue, "***the additional effort it took to move away from Dell" contributed to the Company's declining revenue growth in the Americas***, and constituted, "a distraction in the Americas." He also acknowledged that the move away from Dell "negatively impacted the Americas in the near term."

95. Following this about face from the Individual Defendants' previous assurances, Commvault's stock immediately fell from $68.58 per share at close on April 24, 2015 to $47.56

per share at close on April 25, 2014, or ***over 30%, and wiping our nearly $1 billion of market value***.

96. Moreover, several analysts changed their tune on the Company, either by downgrading Commvault or drastically lowering their target price for Commvault's stock:

- Lake Street Capital Markets lowered their price target by over 33%, stating, "we see a new, low double-digit trend [in "billings" comp, defined as "revenue plus change in deferred revenue"] taking shape and have lowered our price target to reflect the change[;]"

- Jefferies lowered their price target by nearly 20%, anticipating that based on the Company's disclosures, investors should now expect software revenue deceleration through fiscal year 2015;

- Macquarie (USA) Equities Research reduced their price target on Commvault by nearly 33%, reporting that the Company had "signal[ed] acknowledgement of the fact that Dell's (20% of historical revenue) withdrawal of its Sales coverage to CVLT had not been adequately compensated by distribution partners such as Arrow[;]" and

- William Blair reported that "[m]anagement noted that a prime contributor to the underperformance was ***understaffing*** in the core enterprise business in the Americas."

97. The Company has since remained unable to recover from the loss of its Dell partnership. Throughout fiscal 2015, Commvault's revenue growth slowed to eventually hit single digits. In fact, in the first and second quarters of fiscal 2015, revenue growth slowed to 10% and 6.5%, respectively. This resulted in a 37.9% year-to-date stock decline. Unsurprisingly, analysts, for example Macquarie, continued to believe, "***CVLT's recent loss of momentum has been the result of past 20%-plus channel partner Dell's decision to pull away from CVLT and to start selling its own IP***."

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

98. Plaintiff brings this action derivatively in the right and for the benefit of Commvault to redress injuries suffered, and to be suffered, by Commvault as a direct result of the Individual Defendants' breaches of fiduciary duties.

99. Plaintiff is a current shareholder of Commvault and has continuously held Commvault stock throughout the Relevant Period.

100. Plaintiff will adequately and fairly represent the interests of Commvault and its shareholders in enforcing and prosecuting its rights.

101. The foregoing facts, among others, gave rise to Plaintiff's reasonable suspicion that one or more Company fiduciaries may have breached their duties owed to the Company and/or engaged in other violations of law.

102. The Board currently consists of the following ten directors: Defendants Hammer, Bunte, Fanzilli, Geday, Geeslin, Kurimsky, Pulver, Smith, and Walker and Non-defendant Eazor. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful and useless act.

A. The Board Has Concluded in Its Business Judgment That Defendants Hammer And Bunte Are Not Independent

103. The principal professional occupation of defendant Hammer is his employment with Commvault as its Chairman, President and Chief Executive Officer, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. In addition, according to the Company's July 1, 2016 Proxy Statement (the "2016 Proxy"), the Board has admitted that defendant Hammer is not independent under the NASDAQ listing standards, which defines an independent director to be a person that the Board of Directors determines to be free of any relationship with Commvault that, in the opinion of the Board, would interfere with the

exercise of such person's independent judgment in carrying out the responsibilities of a director, and to meet the then-current objective standards for "director independence" set forth in the listing standards. Thus, defendant Hammer lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action.

104. Likewise, the principal professional occupation of defendant Bunte is his employment with Commvault as a director, Executive Vice President and Chief Operating Officer, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. In addition, according to the Company's July 1, 2016 Proxy Statement (the "2016 Proxy"), the Board has admitted that defendant Bunte is not independent under the NASDAQ listing standards, which defines an independent director to be a person that the Board of Directors determines to be free of any relationship with Commvault that, in the opinion of the Board, would interfere with the exercise of such person's independent judgment in carrying out the responsibilities of a director, and to meet the then-current objective standards for "director independence" set forth in the listing standards. Thus, defendant Bunte lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action.

105. The Board likely did not lightly classify defendants Hammer and Bunte as not independent. Their respective relationships, in the opinion of the Board, would evidently interfere with the exercise of independent judgment in carrying out the responsibilities of a director, rendering them incapable of impartially considering a demand to commence and vigorously prosecute this action.

106. Thus, there is reason to doubt that Defendants Hammer and Bunte are independent and issuing a demand on them would be a futile, wasteful and useless act.

B. The Director Defendants Face a Substantial Likelihood of Liability for Their Misconduct

107. The Director Defendants owed Commvault the highest duty of loyalty and breached that duty by recklessly permitting, and in some cases directly contributing to, the Company's issuance of false and misleading statements concerning Commvault's 20% year-over-year software revenue growth. Accordingly, the Director Defendants each face a substantial likelihood of liability.

108. During the Relevant Period, Defendants Kurimsky, Pulver and Walker served as members of the Audit Committee. Pursuant to the Audit Committee Charter, all members of the Audit Committee were and are responsible for, inter alia, overseeing the Company's internal audit function, compliance matters and reviewing with the General Counsel any legal matters, including litigation, that may have a material impact on the Company's financial statements, financial condition or results of operations. In addition, the Audit Committee Defendants were responsible for:

- Recommend[ing] to the Board whether the annual audited financial statements should be included in the annual report on Form 10-K for filing with the SEC;

- Review[ing] and discuss[ing] the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations," before the filing of the Company's Form 10-K and Form 10-Q; and

- Discuss[ing] generally with management earnings press releases (paying particular attention to any use of pro forma information or non-GAAP financial measures), as well as financial information and earnings guidance (generally or on a case-by-case basis) provided to analysts and rating agencies.

109. Defendants Kurimsky, Pulver and Walker breached their fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted the Company to disseminate false and misleading statements in the Company's SEC filings and other disclosures, and caused the above-discussed internal control failures. Therefore, Defendants Kurimsky, Pulver and Walker each face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

110. Each of the Director Defendants, individually and collectively, face a substantial likelihood of liability as a result of their causing the Company to conceal the truth about its financial condition, rendering them unable to impartially investigate the charges and decide whether to pursue action against themselves on behalf of the Company.

111. The Director Defendants, as members of the Board, were and remain subject to the Ethics Code, which requires that ***all external communications—to investors, customers, business partners, government bodies and the public—are fair and accurate***. The Director Defendants violated the Ethics Code by concealing the truth, which, in turn, caused the Company to distribute false and misleading financial information. This resulted in Commvault's stock trading at artificially inflated prices. Because the Director Defendants violated the Ethics Code, they face a substantial likelihood of liability for their breaches of fiduciary duties.

112. Further, defendant Hammer faces a substantial likelihood of liability for issuing false and misleading statements. Defendant Hammer is a defendant in the Securities Class Action and has had claims of securities fraud sustained against him. As a result, defendant Hammer cannot impartially consider a demand.

113. Thus, for the reasons set forth above, all of the Director Defendants, and, if not all of them, certainly the majority of the directors, cannot consider a demand with disinterestedness

and independence. Consequently, a demand upon the Board is excused as futile and this stockholders derivative action should be allowed to proceed.

COUNT I

Against the Individual Defendants for Breach of Fiduciary Duties for
Disseminating False and Misleading Information

114. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

115. As alleged in detail herein, each of the Individual Defendants violated and breached their fiduciary duties of loyalty and good faith by causing or allowing the Company to disseminate to Commvault shareholders materially misleading and inaccurate information through, inter alia, SEC filings, press releases, conference calls and other public statements and disclosures as detailed herein. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

116. As a direct and proximate result of the Individual Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages. Thus, as a result of the misconduct alleged herein, the Individual Defendants are liable to the Company

COUNT II

Against the Individual Defendants for Breach of Fiduciary Duties for
Failing to Maintain Internal Controls

117. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

118. As alleged in detail herein, each of the Individual Defendants had a fiduciary duty to, among other things, exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's

business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

119. The Individual Defendants, most notably those serving on the Board's Audit Committee, willfully ignored the known and pervasive problems with Commvault's internal controls and practices and procedures and failed to make a good faith effort to correct these problems or prevent their recurrence.

120. As a direct and proximate result of the Individual Defendants foregoing breaches of fiduciary duties, the Company has suffered significant damages. Thus, as a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

COUNT III

Against the Individual Defendants for Unjust Enrichment

121. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

122. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Commvault.

123. Plaintiff, as a shareholder and representative of Commvault, seeks restitution from the Individual Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by the Individual Defendants, and each of them, as a result of their wrongful conduct and fiduciary breaches.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that Plaintiff may maintain this derivative action on behalf of Commvault and that Plaintiff is a proper and adequate representative of the Company;

B. Against the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties;

C. Directing Commvault to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable law and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

D. Awarding to Commvault restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Individual Defendants;

E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: April 12, 2017

/s/ James M. Ficaro

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